

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

ELECTRONICALLY
FILED
Dec 27 2016
U.S. DISTRICT COURT
Northern District of WV

R. ROBERT GOUGHNOUR,

State Court Civ. Act. No. 16-C-131

Plaintiff/Petitioner,

Civil Action No: 5:16-cv-191 (Stamp)

v.

HAYWARD BAKER, INC.,

Defendant/Respondent.

NOTICE OF REMOVAL

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

PLEASE TAKE NOTICE that Hayward Baker, Inc. (hereinafter "Hayward Baker"), pursuant to 28 U.S.C. §§1332, 1441, and 1446, files this Notice of Removal and alleges as follows:

1. Hayward Baker is a named defendant in the above-captioned action, which commenced on December 2, 2016 in the Circuit Court of Brooke County, West Virginia, Civil Action No. 16-C-131 (hereinafter the "State Court Action"). Hayward Baker, Inc. was served by certified mail on December 5, 2016.
2. The District Court has jurisdiction over the State Court Action pursuant to 28 U.S.C. §§ 1332, as it is the judicial district in which the State Court Action is Pending.
3. Hayward Baker is entitled to removal of the State Court Action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because the parties are completely diverse and because it is a civil action with an amount in controversy exceeding \$75,000.00.

4. Petitioner/Plaintiff R. Robert Goughnour is a resident of Wellsburg, Brooke County, West Virginia.
5. Defendant/Respondent Hayward Baker, Inc. is a Delaware Corporation with its principal place of business located at 7550 Teague Road, Suite 300, Hanover, Anne Arundel County, Maryland.
6. An amount in controversy was not plead within Plaintiff's Petition/Complaint. As a result, pursuant to 28 U.S.C. 1446(c)((2)(A)(i), Defendant/Respondent puts forth the following assertion as to the amount in controversy:

Should the Court determine that the agreement in question should be enforced as interpreted by Mr. Goughnour, Hayward Baker, Inc. would be forced to pay Mr. Goughnour an aggregate sum greater than \$75,000.00 through the life of the agreement – which under Mr. Goughnour's interpretation would run through January 28, 2023. In 2014, Hayward Baker paid Mr. Goughnour \$224,747.00 pursuant to the terms of the agreement; in 2015 Hayward Baker paid Mr. Goughnour \$258,477.00 pursuant to the terms of the agreement; and in 2016 (through April) Hayward Baker paid Mr. Goughnour \$101,593.00 pursuant to the terms of the agreement. *See* **EXHIBIT A** attached hereto and incorporated herein.

Therefore, if the Court determines that Mr. Goughnour's interpretation is correct and payment is to continue through January 28, 2023, a position which Hayward Baker disagrees with, payments to Mr. Goughnour are almost certain to exceed \$75,000.00. As a result, the amount in controversy surrounding this litigation exceeds the threshold required for diversity jurisdiction to apply.

7. Pursuant to the provisions of 28 U.S.C. §1446(a), included with this filing, and incorporated herein by reference, are copies of all the process, pleadings, and orders served on Hayward Baker, Inc. prior to removal of this action.

8. Immediately after the filing of this Notice of Removal, a copy of the Notice of Removal was mailed for filing with the Clerk of the Circuit Court of Brooke County, West Virginia.

A copy was also mailed for service on counsel for Plaintiff/Petitioner.

WHEREFORE, Hayward Baker respectfully prays that this action be removed from the Circuit Court of Brooke County, West Virginia and placed on the docket for the United States District Court for the Northern District of West Virginia.

DATED: December 27, 2016

**HAYWARD BAKER, INC.,
Defendant/Respondent,**

/s/ Jeffery D. Kaiser

Charles J. Kaiser, Jr., Esq. (WV Bar No. 1946)

Denise Knouse-Snyder, Esq. (WV Bar No. 7073)

Jeffery D. Kaiser, Esq. (WV Bar No. 12284)

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Counsel for Defendant/Respondent Hayward Baker, Inc.

**UNITED STATES DISTRICT COURT FOR THE
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State Court Civ. Act. No. 16-C-131

Plaintiff/Petitioner,

v.

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Defendant/Respondent.

CERTIFICATE OF SERVICE

I, Jeffery D. Kaiser, Esq., do hereby certify that a true and accurate copy of the foregoing NOTICE OF REMOVAL was filed with the District Court for the Northern District of West Virginia via the CM/ECF system and with the Circuit Court of Brooke County, West Virginia. I also certify that a copy of said filing was mailed to counsel of record for the Plaintiff, listed below, this 27th Day of December, 2016:

Mr. David F. Cross, Esq.

Attorney at Law

727 Charles Street

Wellsburg, WV 26070

Counsel for Plaintiff Mr. R. Robert Goughnour

/s/ Jeffery D. Kaiser

Charles J. Kaiser, Jr., Esq. (WV Bar No. 1946)

Denise Knouse-Snyder, Esq. (WV Bar No. 7073)

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